

associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see subparts C and D as appropriate).

§§ 26.309–26.320 [Reserved]

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume “harmful electrical interference” to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in part 1, subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 [Reserved]

§ 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit electronically via the ULS, a signed statement with its long-form application (FCC Form 601) stating that sufficient properties will be divested within ninety days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications

subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant of the license.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68954, Dec. 14, 1998]

§§ 26.324–26.326 [Reserved]

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AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

SOURCE: 62 FR 9658, Mar. 3, 1997, unless otherwise noted.

Subpart A—General Information**§ 27.1 Basis and purpose.**

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the Wireless Communications Service (WCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose.* This part states the conditions under which the 2305–2320 MHz and 2345–2360 MHz bands are made available and licensed for the provision of WCS.

(c) *Scope.* The rules in this part apply only to stations authorized under this part.

§ 27.2 Permissible communications.

Subject to the rules contained herein, fixed, mobile and radiolocation services may be provided using the 2305–2320 and 2345–2360 MHz bands. In addition, satellite digital audio radio service (DARS) may be provided using the 2310–2320 and 2345–2360 MHz bands. Satellite DARS service shall be provided in manner consistent with part 25 of this chapter.

§ 27.3 Other applicable rule parts.

Other FCC rule parts applicable to the Wireless Communications Service include the following:

(a) *Part 0.* This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(c) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5.* This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17.* This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 25*. This part contains the requirements for satellite communications, including satellite DARS.

(g) *Part 51*. This part contains general duties of telecommunications carriers to provide for interconnection with other telecommunications carriers.

(h) *Part 68*. This part contains technical standards for connection of terminal equipment to the telephone network.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998]

§ 27.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Base station. A land station in the land mobile service.

Effective Radiated Power (ERP) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while

in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS). The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Portable device. Transmitters designed to be used within 20 centimeters of the body of the user.

Radiodetermination. The determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Radiolocation land station. A station in the radiolocation service not intended to be used while in motion.

Radiolocation mobile station. A station intended to be used while in motion or during halts at unspecified points.

Radionavigation. Radiodetermination used for the purpose of navigation, including obstruction warning.

Satellite Digital Audio Radio Service (satellite DARS). A radiocommunication service in which compact disc quality programming is digitally transmitted by one or more space stations.

Time division multiple access (TDMA). A multiple access technique whereby users share a transmission medium by being assigned and using (one-at-a-time) for a limited number of time division multiplexed channels; implies that several transmitters use one channel for sending several bit streams.

Time division multiplexing (TDM). A multiplexing technique whereby two or more channels are derived from a transmission medium by dividing access to the medium into sequential intervals. Each channel has access to the entire bandwidth of the medium during its interval. This implies that one transmitter uses one channel to send several bit streams of information.

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for

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all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

Wireless communications service. A radiocommunication service that encompasses fixed, mobile, satellite DARS, and radiolocation services.

[62 FR 9658, Mar. 3, 1997, as amended at 62 FR 16497, Apr. 7, 1997; 63 FR 68954, Dec. 14, 1998]

§ 27.5 Frequencies.

The following frequencies are available for WCS.

(a) Two paired channel blocks are available for assignment on a Major Economic Area basis as follows:

Block A: 2305–2310 and 2350–2355 MHz; and
Block B: 2310–2315 and 2355–2360 MHz.

(b) Two unpaired channel blocks are available for assignment on a Regional Economic Area Grouping basis as follows:

Block C: 2315–2320 MHz; and

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Block D: 2345–2350 MHz.

§ 27.6 Service areas.

WCS service areas are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the FEDERAL REGISTER Notice that established the 172 EAs are available for public inspection and copying at the Commercial Wireless Division Public Reference Room, room 5608, 2025 M Street, NW, Washington, DC.

(a) The 52 MEAs are composed of one or more EAs and the 12 REAGs are composed of one or more MEAs, as defined in the table below:

REAGs	MEAs	EAs
1 (Northeast)	1 (Boston)	1–3.
	2 (New York City)	4–7, 10.
	3 (Buffalo)	8.
	4 (Philadelphia)	11–12.
2 (Southeast)	5 (Washington)	13–14.
	6 (Richmond)	15–17, 20.
	7 (Charlotte-Greensboro-Greenville-Raleigh)	18–19, 21–26, 41–42, 46.
	8 (Atlanta)	27–28, 37–40, 43.
	9 (Jacksonville)	29, 35.
	10 (Tampa-St. Petersburg-Orlando)	30, 33–34.
	11 (Miami)	31–32.
3 (Great Lakes)	12 (Pittsburgh)	9, 52–53.
	13 (Cincinnati-Dayton)	48–50.
	14 (Columbus)	51.
	15 (Cleveland)	54–55.
	16 (Detroit)	56–58, 61–62.
	17 (Milwaukee)	59–60, 63, 104–105, 108.
	18 (Chicago)	64–66, 68, 97, 101.
	19 (Indianapolis)	67.
	20 (Minneapolis-St. Paul)	106–107, 109–114, 116.
	21 (Des Moines-Quad Cities)	100, 102–103, 117.
4 (Mississippi Valley)	22 (Knoxville)	44–45.
	23 (Louisville-Lexington-Evansville)	47, 69–70, 72.
	24 (Birmingham)	36, 74, 78–79.
	25 (Nashville)	71.
	26 (Memphis-Jackson)	73, 75–77.
	27 (New Orleans-Baton Rouge)	80–85.
	28 (Little Rock)	90–92, 95.
	29 (Kansas City)	93, 99, 123.
	30 (St. Louis)	94, 96, 98.
5 (Central)	31 (Houston)	86–87, 131.
	32 (Dallas-Fort Worth)	88–89, 127–130, 135, 137–138.
	33 (Denver)	115, 140–143.
	34 (Omaha)	118–121.
	35 (Wichita)	122.
	36 (Tulsa)	124.

REAGs	MEAs	EAs
	37 (Oklahoma City)	125–126.
	38 (San Antonio)	132–134.
	39 (El Paso-Albuquerque)	136, 139, 155–157.
	40 (Phoenix)	154, 158–159.
6 (West)	41 (Spokane-Billings)	144–147, 168.
	42 (Salt Lake City)	148–150, 152.
	43 (San Francisco-Oakland-San Jose) ...	151, 162–165.
	44 (Los Angeles-San Diego)	153, 160–161.
	45 (Portland)	166–167.
	46 (Seattle)	169–170.
7 (Alaska)	47 (Alaska)	171.
8 (Hawaii)	48 (Hawaii)	172.
9 (Guam and the Northern Mariana Islands).	49 (Guam and the Northern Mariana Islands).	173.
10 (Puerto Rico and U.S. Virgin Islands) ..	50 (Puerto Rico and U.S. Virgin Islands)	174.
11 (American Samoa)	51 (American Samoa)	175.
12 (Gulf of Mexico)	52 (Gulf of Mexico)	176.

(b) The Gulf of Mexico EA extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

Subpart B—Applications and Licenses

§ 27.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

(b) The initial WCS authorizations shall be granted for 10 megahertz of spectrum in accordance with § 27.5. Authorizations for Blocks A and B will be based on Major Economic Areas (MEAs), as shown in § 27.6. Authorizations for Blocks C and D will be based on Regional Economic Area Groupings (REAGs), as shown in § 27.6. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with § 27.63.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998]

§ 27.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. section 310, is eligible to hold a license under this part.

§ 27.13 License period.

Initial WCS authorizations will have a term not to exceed ten years from the date of original issuance or renewal.

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) WCS licensees must make a showing of “substantial service” in their license area within ten years of being licensed. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided “substantial” service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, a WCS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

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(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its WCS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to section 27.324.

(2) WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical Standards*—(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to section 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) *Signal levels.* For purposes of partitioning and disaggregation, WCS systems must be designed so as not to exceed a signal level of 47 dBV/m at the licensee's service area boundary, unless the affected adjacent service area li-

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censees have agreed to a different signal level. See section 27.55.

(c) *Unjust Enrichment.*—(1) *Bidding credits.* Licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in section 27.209(c).

(2) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 27.13.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998]

Subpart C—Technical Standards

§ 27.50 Power limits.

(a) Fixed, land, and radiolocation land stations transmitting in the 2305–2320 MHz and 2345–2360 MHz bands are limited to 2000 watts peak equivalent isotropically radiated power (EIRP).

(b) Mobile and radiolocation mobile stations transmitting in the 2305–2320 MHz and 2345–2360 MHz bands are limited to 20 watts EIRP peak power.

(c) Peak transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, *etc.*, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

[62 FR 16497, Apr. 7, 1997]

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, DC, at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

§ 27.52 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in sections 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 27.53 Emission limits.

(a) The power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (p) within the licensed band(s) of operation, measured in watts, by the following amounts:

(1) *For fixed, land, and radiolocation land stations:* By a factor not less than $80 + 10 \log (p)$ dB on all frequencies between 2320 and 2345 MHz;

(2) *For mobile and radiolocation mobile stations:* By a factor not less than $110 + 10 \log (p)$ dB on all frequencies between 2320 and 2345 MHz;

(3) *For fixed, land, mobile, radiolocation land and radiolocation mobile stations:* By a factor not less than $70 + 10 \log (p)$ dB on all frequencies below 2300 MHz and on all frequencies above 2370 MHz; and not less than $43 + 10 \log (p)$ dB on all frequencies between 2300 and 2320 MHz and on all frequencies between 2345 and 2370 MHz that are outside the licensed bands of operation;

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth;

(5) In complying with the requirements in § 27.53(a)(1) and § 27.53(a)(2), WCS equipment that uses opposite sense circular polarization from that used by Satellite DARS systems in the 2320–2345 MHz band shall be permitted an allowance of 10 dB;

(6) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the edges, both upper and lower, of the licensee's bands of operation as the design permits;

(7) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power;

(8) Waiver requests of any of the out-of-band emission limits in paragraphs (a)(1) through (a)(7) of this section shall be entertained only if interference protection equivalent to that afforded by the limits is shown;

(9) In the 2305–2315 MHz band, if portable devices comply with all of the following requirements, then paragraph (a)(2) of this section shall not apply to portable devices, which instead shall attenuate all emissions into the 2320–2345 MHz band by a factor of not less than $93 + 10 \log (p)$ dB:

(i) The portable device has a duty cycle of 12.5% or less, with at most a 312.5 microsecond pulse every 2.5 milliseconds;

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(ii) The portable device must employ time division multiple access (TDMA) technology;

(iii) The nominal peak transmit output power of the portable device is no more than 200 milliwatts (25 milliwatts average power);

(iv) The portable device operates with the minimum power necessary for successful communications;

(v) The nominal average base station transmit output power is no more than 800 milliwatts when the base station antennas is located at a height of at least 8 meters (26.25 feet) above the ground;

(vi) Only fixed and portable devices and services may be provided: vehicle-mounted units are not permitted; and

(vii) Transmitting antennas shall employ linear polarization or another polarization that provides equivalent of better discrimination with respect to a DARS antenna;

(10) The out-of-band emissions limits in paragraphs (a)(1) through (a)(9) of this section may be modified by the private contractual agreement of all affected licensees, who shall maintain a copy of the agreement in their station files and disclose it to prospective assignees or transferees and, upon request, to the Commission.

(b) *For WCS Satellite DARS operations:* The limits set forth in § 25.202(f) of this chapter shall apply, except that Satellite DARS operations shall be limited to a maximum power flux density of $-197 \text{ dBW/m}^2/4 \text{ kHz}$ in the 2370-2390 MHz band at Arecibo, Puerto Rico.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

[62 FR 16497, Apr. 7, 1997]

§ 27.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

§ 27.55 Field strength limits.

The predicted or measured median field strength at any location on the border of a WCS service area shall not exceed 47 dBuV/m unless the parties agree to a different field strength. This

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value applies to both the initially offered MEA and REAG service areas and to partitioned service areas.

§ 27.56 Antenna structures; air navigation safety.

A licensee that owns its antenna structure(s) must not allow such antenna structure(s) to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, the FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of part 17 of this chapter. See § 17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. For any construction or alteration that would exceed the requirements of section 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, 1270 Fairfield Road, Gettysburg, PA 17325.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

§ 27.57 International coordination.

WCS operations in the border areas shall be subject to coordination with

those countries and provide protection to non-U.S. operations in the 2305-2320 and 2345-2360 MHz bands as appropriate. In addition, satellite DARS operations in WCS spectrum shall be subject to international satellite coordination procedures.

§ 27.58 Interference to MDS/ITFS receivers.

(a) WCS licensees shall bear full financial obligation to remedy interference to MDS/ITFS block downconverters if all of the following conditions are met:

(1) The complaint is received by the WCS licensee prior to February 20, 2002;

(2) The MDS/ITFS downconverter was installed prior to August 20, 1998;

(3) The WCS fixed or land station transmits at 50 or more watts peak EIRP;

(4) The MDS/ITFS downconverter is located within a WCS transmitter's free space power flux density contour of -34 dBW/m²; and

(5) The MDS/ITFS customer or licensee has informed the WCS licensee of the interference within one year from the initial operation of the WCS transmitter or within one year from any subsequent power increases at the WCS station.

(b) Resolution of the complaint shall be at no cost to the complainant.

(c) Two or more WCS licensees collocating their antennas on the same tower shall assume shared responsibility for remedying interference complaints within the area determined by paragraph (a)(4) of this section unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(d) If the WCS licensee cannot otherwise eliminate interference caused to MDS/ITFS reception, then that licensee must cease operations from the offending WCS facility.

(e) At least 30 days prior to commencing operations from any new WCS transmission site or with increased power from any existing WCS transmission site, a WCS licensee shall notify all MDS/ITFS licensees in or through whose licensed service area they intend to operate of the technical parameters of the WCS transmission facility. WCS and MDS/ITFS licensees

are expected to coordinate voluntarily and in good faith to avoid interference problems and to allow the greatest operational flexibility in each other's operations.

[62 FR 16498, Apr. 7, 1997]

§§ 27.59-27.62 [Reserved]

§ 27.63 Disturbance of AM broadcast station antenna patterns.

WCS licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) *Non-directional AM stations.* If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) *Directional AM stations.* If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

§ 27.64 Protection from interference.

Wireless Communications Service (WCS) stations operating in full accordance with applicable FCC rules and

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the terms and conditions of their authorizations are normally considered to be non-interfering. If the FCC determines, however, that interference which significantly interrupts or degrades a radio service is being caused, it may, after notice and an opportunity for a hearing, require modifications to any WCS station as necessary to eliminate such interference.

(a) *Failure to operate as authorized.* Any licensee causing interference to the service of other stations by failing to operate its station in full accordance with its authorization and applicable FCC rules shall discontinue all transmissions, except those necessary for the immediate safety of life or property, until it can bring its station into full compliance with the authorization and rules.

(b) *Intermodulation interference.* Licensees should attempt to resolve such interference by technical means.

(c) *Situations in which no protection is afforded.* Except as provided elsewhere in this part, no protection from interference is afforded in the following situations:

(1) *Interference to base receivers from base or fixed transmitters.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(2) *Interference to mobile receivers from mobile transmitters.* No protection is provided against mobile-to-mobile interference.

(3) *Interference to base receivers from mobile transmitters.* No protection is provided against mobile-to-base interference.

(4) *Interference to fixed stations.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(5) *Anomalous or infrequent propagation modes.* No protection is provided against interference caused by tropospheric and ionospheric propagation of signals.

Subpart D—Competitive Bidding Procedures for WCS

§ 27.201 WCS subject to competitive bidding.

Mutually exclusive initial applications to provide WCS service are sub-

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ject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise specified in this part.

§ 27.202 Competitive bidding mechanisms.

In addition to the provisions of § 1.2104(a) through (f), (h) and (i) of this chapter, the following provision will apply to WCS: Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

§ 27.203 Withdrawal, default and disqualification payments.

When the Commission conducts a simultaneous multiple round auction pursuant to § 27.202, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

(a) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(b) *Default or disqualification after close of auction.* See § 1.2104(g)(2) of this chapter.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 2349, Jan. 15, 1998]

§ 27.204 Bidding application and certification procedures; prohibition of collusion.

(a) *Submission of Short-Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit, by means of electronic filing, a short-form application (FCC Form 175).

Unless otherwise provided by public notice, the Form 175 need not be accompanied by an upfront payment (see § 27.205).

(1) All Form 175s will be due on the date specified by public notice.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the names, citizenship and addresses of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to section 27.210(b), a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 27.210(b).

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the ap-

plicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure;

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid; and

(x) Certification under penalty of perjury that it is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency.

NOTE TO PARAGRAPH (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) Modification and Amendment of Application. Applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make changes to the information required by § 27.204(a) (such as ownership changes or changes in the identification of parties to bidding consortia), provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for licenses in any of the same geographic license areas as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered

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to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 27.204(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term "applicant" shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 5 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) The term "bids or bidding strategies" shall include capital calls or requests for additional funds in support of bids or bidding strategies.

§ 27.205 Submission of upfront payments.

(a) Each eligible bidder for WCS licenses subject to auction shall pay an upfront payment pursuant to this chapter and procedures specified by public notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer.

(c) If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission will refund the excess amount after determining that no bid withdrawal payments are owed by that bidder.

(e) In accordance with the provisions of paragraph (d) of this section, in the event a payment is assessed pursuant to § 27.203 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or

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default payment before being applied toward any additional payment obligations that the high bidder may have.

§ 27.206 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Proc-

essing Section, 1919 M Street, NW, Room 222, Washington, DC 20554. An applicant that fails to submit the required long-form application as required under this section, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in section 27.203.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 27.204.

§ 27.207 [Reserved]

§ 27.208 License grant, denial, default, and disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 27.203. In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 27.206(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in

§ 27.203. In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 27.209 Designated entities; bidding credits; unjust enrichment.

(a) Designated entities entitled to preferences in the WCS auction are small businesses and very small businesses as defined in § 27.110(b). Designated entities will be eligible for bidding credits, as defined in paragraphs (b) and (c) of this section.

(b) A winning bidder that qualifies as a *small business* may use a bidding credit of 25 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a *very small business* may use a bidding credit of 35 percent to lower the cost of its winning bid.

(d) *Unjust enrichment.* See § 1.2111 of this chapter.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 2349, Jan. 15, 1998]

§ 27.210 Definitions.

(a) Scope. The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) Small Business; Very Small Business; Consortia.

(1) A *small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the \$40 million average annual gross revenues size

standard set forth in paragraph (b)(1) of this section or the \$15 million average annual gross revenues size standard set forth in paragraph (b)(2) of this section, the gross revenues of the applicant and its affiliates shall be considered on a cumulative basis and aggregated subject to the following exceptions:

(i) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues; and

(ii) For purposes of paragraphs (b)(1) and (b)(2) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of paragraphs (b)(1) and (b)(2) of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of paragraphs (b)(1) and (b)(2) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(c) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial

statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.*—(1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

- (i) Directly or indirectly controls or has the power to control the applicant;
- (ii) Is directly or indirectly controlled by the applicant;
- (iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant; or
- (iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (d)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; con-

tractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him/her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

- (A) The family members are estranged;
- (B) The family ties are remote;

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (d)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in a WCS geographic area license application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he/she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he/she owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he/she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (d)(5). If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in a WCS geographic area license application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (d)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in a WCS geographic area license application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (d)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as

the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

Subpart E—Application, Licensing, and Processing Rules for WCS

§ 27.301 [Reserved]

§ 27.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including § 27.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien Ownership. A WCS authorization may not be granted to or held by an entity not meeting the requirements of section 310 of the Communications Act of 1934, as amended, 47 U.S.C. section 310 insofar as applicable to the particular service in question.

§§ 27.303–27.307 [Reserved]

§ 27.308 Technical content of applications.

All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a WCS license must also comply with all technical requirements of the rules governing the WCS (see subparts C and D of this part as appropriate).

§§ 27.310–27.320 [Reserved]

§ 27.321 Mutually exclusive applications.

(a) Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under the Commission's rules

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governing the Wireless Communications Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Wireless Communications Services.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§§ 27.322–27.325 [Reserved]

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

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- 32.2215 Electro-mechanical switching.
- 32.2220 Operator systems.
- 32.2230 Central office—transmission.
- 32.2231 Radio systems.
- 32.2232 Circuit equipment.
- 32.2310 Information origination/termination.
- 32.2311 Station apparatus.
- 32.2321 Customer premises wiring.
- 32.2341 Large private branch exchanges.
- 32.2351 Public telephone terminal equipment.
- 32.2362 Other terminal equipment.